

MURDOCK & GOLDENBERG**A LEGAL PROFESSIONAL ASSOCIATION**

272738

FACSIMILE TRANSMITTALsent by: **JEFFREY S. GOLDENBERG, Esq.****November 22, 1999****To: Craig Melodia****Fax #: 312-886-7160****Firm: U.S. EPA, Region V****Client #:****Pages: 3 (including cover)**

Comments: Dear Mr. Melodia: Attached you will find my October 27, 1998 correspondence to Allocator Barkett explaining the waste-in calculation error. If you have any questions please contact me immediately at 513-345-8297. As I stated during our telephone conversation, both the City of Deer Park and City of Blue Ash will sign-off on this Consent Decree. *Jeff.*

If there are any problems in receiving this transmission, please call (513) 345-8291 immediately. Thank you.

NOTICE

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, *you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.* If you have received this communication in error, please notify the sender listed above or the law firm or anyone at the law firm of *Murdock & Goldenberg LPA* at (513) 345-8291 immediately by telephone, or if by long distance, a collect telephone call, and return the entire contents of this fax transmission, including all printed papers, to the sender at the address below via first class mail. You will be reimbursed for your reasonable expenses for returning the fax transmission.

Originals to follow by: n/a

**Murdock & Goldenberg, L.P.A.
Suite 400, 700 Walnut Street
Cincinnati, OH 45202-2015**

**Tel: (513) 345-8297
Fax: (513) 345-8294**

MURDOCK, BECK, GOLDENBERG & BENINTENDI

A LEGAL PROFESSIONAL ASSOCIATION
SUITE 400, 700 WALNUT STREET
CINCINNATI, OHIO 45202-2015
TELEPHONE: (513) 345-8291
FACSIMILE: (513) 345-8294

October 27, 1998

Via Facsimile and U.S. Mail

John M. Barkett, Esq.
Coll, Davidson, Carter, Smith, Salter & Barkett, P.A.
3200 Miami Center
201 S. Biscayne Boulevard
Miami, Florida 33131

Re: *Volume Calculation for the Cities of Deer Park and Silverton*

Dear Mr. Barkett:

Upon reviewing your "waste-in" calculations for the Cities of Deer Park and Silverton, I believe that you may have over-estimated the volume of waste attributable to each City. The core of your calculations relies upon a \$.1067 per cubic yard fee charged by the Skinners. To arrive at this \$.1067 figure, you accepted the City of Deer Park's representation that it generated 18 loads of municipal solid waste per week during the relevant time period. You also accepted the City of Deer Park's representation that it operated one 13 cubic yard packer and one 7 cubic yard dump truck during the relevant time period. You then concluded "[i]n other words, the City took 20 cys times 18 loads, or 360 cys per week to the site." Preliminary Allocation Report, p. 60.

According to your calculation, 18 loads per week from the 13 cubic yard packer reached the site and 18 loads per week from the 7 cubic yard dump truck reached the site. Hence, your calculation assumes that the City generated 36 loads per week. However, as is stated in the City of Deer Park's Questionnaire Response to question 13(d), the City believes that it generated a total of 18 loads per week, half of which came from the 13 cubic yard packer and half of which came from the 7 cubic yard dump truck. ("In all likelihood, both the open bed dump truck and the thirteen yard load packer were used to transport material to the site. Assuming that each truck was used for half of the total number of loads. . .") City of Deer Park's Questionnaire Responses, p. 4. Thus, instead of concluding that the City of Deer Park deposited weekly 360 cubic yards of waste material at the site, the City's actual weekly generation rate should be 180 cubic yards per week. $\{(13 \text{ cu. yds./1 truck} * 9 \text{ trucks/1 week}) + (7 \text{ cu. yds./1 truck} * 9 \text{ trucks/week}) = 180 \text{ cu. yds/week}\}$

Using the 180 cubic yards/week generation rate, the City of Deer Park hauled 900 cubic yards to the site during the five week period in question. Since the City was charge \$192.00 for

this amount of waste, the price per cubic yard equals \$.2133. ($\$192.00/900 \text{ cu. yds} = \$.2133/\text{cu. yd.}$) Consequently, the remaining \$342.00 in log entries represents an additional 1,603 cubic yards. ($\$342.00/\$.2133 = 1,603 \text{ cu. yds.}$).

For the five week period in 1957, the uncompacted cubic yard total for the packer is 1,170 cubic yards ($13 \text{ cu. yds.} * 2:1 \text{ compaction ratio} * 9 \text{ loads/week} * 5 \text{ weeks} = 1,170 \text{ cu. yds.}$), while the uncompacted cubic yard total for the dump truck is 315 cubic yards ($7 \text{ cu. yds.} * 9 \text{ loads/week} * 5 \text{ week} = 315 \text{ cu. yds.}$). For the remaining 1,603 cubic yards, the uncompacted cubic yard total for the packer is 2,084 cubic yards ($1,603 \text{ cu. yds} * 13/20 * 2 = 2,084 \text{ cu. yds.}$). The balance, 561 cubic yards, are uncompacted.

When these four figures are added together, the total is 4,130 cubic yards. Assigning the additional 27 cubic yards of waste to the City based upon Maria Roy's and Rodney Miller's testimony, the City of Deer Park's total waste-in amount is 4,157 cubic yards.

As you can see, in reaching the 4,157 cubic yard waste-in total, I followed your calculations and simply inputted the \$.2133/cu. yd. figure instead of the \$.1067/cu. yd. figure.

As for the City of Silverton, they had two entries in the log totaling \$48.00. Assigning half of the loads to a packer and half to a dump truck and using the \$.1067/cu. yd. figure from the City of Deer Park's calculation, you concluded that the City of Silverton's waste-in total is 675 cubic yards (Preliminary Allocation Report, p. 79). As discussed above, however, I believe the correct disposal price is actually \$.2133/cu. yd. Using this \$.2133/cu. yd. figure, the City of Silverton's waste-in amount is 337 cubic yards. ($\$48.00/\$.2133 = 225 \text{ cu. yds.}$; $(\frac{1}{2} * 225 \text{ cu. yds.} * 2:1 \text{ comp. ratio}) + (\frac{1}{2} * 225 \text{ cu. yds.}) = 337 \text{ cu. yds.}$)

In light of the potential size of the site's orphan share, the importance of these waste-in calculations is magnified. If you have any questions regarding the above calculations, I would be happy to discuss them with you at your earliest convenience. I look forward to your response once you have had an opportunity to review these issues. Thank you for your time and consideration.

Very truly yours,



Jeffrey S. Goldenberg

cc: David O'Leary
Michael K. Allen, Esq.
John C. Murdock, Esq.